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Federal Jurisdiction--Pendent Claims--Doctrine of Pendent Jurisdiction Applies to Claim of Second Plaintiff--*Wilson v. American Chain & Cable co.; Newman v. Freeman*

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RECENT DEVELOPMENTS

FEDERAL JURISDICTION—PENDENT CLAIMS—Doctrine of Pendent Jurisdiction Applies to Claim of Second Plaintiff—*Wilson v. American Chain & Cable Co.**; *Newman v. Freeman***

In *Wilson v. American Chain & Cable Co.*,[1] plaintiff, whose son was injured by a defective lawnmower, brought a diversity action in federal district court on behalf of his son against the manufacturer, alleging damages in excess of the $10,000 jurisdictional minimum.[2] Simultaneously, plaintiff sought recovery in his own name for medical bills and the expense of orthopedic shoes resulting from the injury. Because the latter claim was for less than $10,000, it was dismissed by the district court for lack of subject matter jurisdiction.[3] On appeal to the Third Circuit, *held, inter alia,* the claim of the father was erroneously dismissed. Where two claims arising from the same injury are brought on behalf of two members of the same household, but only one claim satisfies the requisite jurisdictional amount, the doctrine of pendent jurisdiction may properly be invoked to eliminate the normal requirement that each claim independently meet the jurisdictional standard.

In a related case, *Newman v. Freeman*,[4] a New Jersey guardian was appointed to bring an action on behalf of an injured Pennsylvania minor against the allegedly negligent Pennsylvania defendant, thus creating diversity of citizenship between the initial parties. The federal District Court for the Eastern District of Pennsylvania permitted the minor's father, also a Pennsylvania resident, to append his own claim against the defendant to the main claim, even though the normal requirement of "maximum diversity" of citizenship between plaintiffs and defendants was thereby circumvented.

The doctrine of pendent jurisdiction is a judicially created[5] ex-

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* 364 F.2d 558 (3d Cir. 1966).

** 262 F. Supp. 106 (E.D. Pa. 1966).

1. 364 F.2d 558 (3d Cir. 1966).

2. The statute authorizing federal court jurisdiction based upon diversity of citizenship reads in part as follows: "(a) The district court shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between—(1) citizens of different States . . . ." 28 U.S.C. § 1332 (1964).

3. The father's claim was also dismissed on the alternative ground that he was guilty of contributory negligence as a matter of law.

4. 262 F. Supp. 106 (E.D. Pa. 1966).

5. *See* Hurn v. Oursler, 289 U.S. 238 (1933); Siler v. Louisville & Nash. R.R., 213 U.S. 175 (1909). The application of pendent jurisdiction in one context was subsequently given statutory authority in 1948. 28 U.S.C. § 1338(b), enacted in that year, provides as follows: "The district courts shall have original jurisdiction of any civil action asserting a claim of unfair competition when joined with a substantial and

tension of federal jurisdiction based upon considerations of judicial economy and convenience to the parties.[6] Traditionally, it has been defined[7] as a device which permits a plaintiff suing in federal court on a federally created right[8] to seek relief at the same time on a properly related nonfederal claim over which the court would have no jurisdiction if it were being litigated alone.[9] The proper relationship that must exist between the two claims to justify pendent jurisdiction has not been entirely clear.[10] The original test laid down by the Supreme Court in the 1933 case of *Hurn v. Oursler*[11] was that

related claim under the copyright, patent or trademark laws." *See* Note, *The Doctrine of Hurn v. Oursler and the New Judicial Code*, 37 IOWA L. REV. 406 (1952).

6. *See* United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966); Wilson v. American Chain & Cable Co., 364 F.2d 558, 564 (3d Cir. 1966).

7. *See, e.g.*, W. MOORE & D. VESTAL, MOORE'S MANUAL §§ 5.07, 5.15 (1967); Note, *The Evolution and Scope of the Doctrine of Pendent Jurisdiction in the Federal Courts*, 62 COLUM. L. REV. 1018 (1962); Note, *Pendent Jurisdiction: An Expanding Concept in Federal Court Jurisdiction*, 51 IOWA L. REV. 151 (1965); 5 A.L.R.3d 1040 (1966).

8. The term "federally-created right" in this context means a substantive right created by the Constitution or a law of the United States. In addition to patent, copyright and trademark rights, it includes those rights commonly referred to as presenting "federal questions." *See generally* W. MOORE & D. VESTAL, MOORE'S MANUAL §§ 5.02-.03 (1967).

9. Pendent jurisdiction which covers the specific case of extending jurisdiction to certain nonfederal claims that the plaintiff has against the same defendant where a related claim is originally within the federal court's jurisdiction should be distinguished at this point from the related doctrine of ancillary jurisdiction. Unfortunately, however, the relation between the two has seldom been clear. *Compare, e.g.*, 1 W. BARRON & A. HOLTZOFF, FEDERAL PRACTICE AND PROCEDURE § 23 (Wright ed. 1960), which recognizes pendent only as an example of ancillary, *with* Note, *Pendent Jurisdiction: An Expanding Concept in Federal Court Jurisdiction*, 51 IOWA L. REV. 151, 155-56 n.29 (1965), which implies precisely the opposite, stating that pendent is the broader of the two doctrines. Nevertheless, the hard-core meanings of the two can be distinguished. Ancillary jurisdiction was originally created to enable a federal court to adjudicate all claims pertaining to property under its custody or control. Freeman v. Howe, 65 U.S. (24 How.) 450 (1860). The doctrine was later expanded, however, to cover situations in which a federal court found it necessary to hear a related claim, over which it otherwise lacked jurisdiction, in order to effectuate a complete, effective, and equitable disposition of the rights and liabilities asserted in another claim over which it had already exercised jurisdiction. A typical example of this expanded application is the enjoining of a contemporaneous state court proceeding on the same or related claim as that pending in the federal court. *See* 1 W. BARRON & A. HOLTZOFF, FEDERAL PRACTICE & PROCEDURE § 23 (Wright ed. 1960). Finally, ancillary jurisdiction, unlike pendent jurisdiction, is always mandatory. *See* Note, *supra*.

A large number of claims adjudicated in federal courts fall into what might best be described as an area of overlap. Counterclaims, cross-claims, and third-party claims, while usually referred to as ancillary, and while a part of the federal courts' mandatory jurisdiction, are not ancillary in the strictest sense that they must be adjudicated with the main claim in order to insure an effective or equitable remedy. Rather, they are permitted to be litigated with the main claim largely for reasons of judicial economy and party convenience, considerations more applicable to the basic notion of pendent jurisdiction.

10. *See* Note, *Pendent Jurisdiction: An Expanding Concept in Federal Court Jurisdiction*, 51 IOWA L. REV. 151, 152-53 (1965); Note, *The Evolution and Scope of the Doctrine of Pendent Jurisdiction in the Federal Courts*, 62 COLUM. L. REV. 1018, 1026-30 (1962); 5 A.L.R.3d 1040, 1068-73 (1966).

11. 289 U.S. 238 (1933).

(1) the claims must arise out of the same "cause of action," and (2) the federal claim must not be "plainly insubstantial."[12] In *Hurn*, the plaintiff brought an action in federal court alleging a claim under federal copyright law and also a claim under the state common-law doctrine of unfair competition. The two claims were based upon the same facts. Jurisdiction over the copyright claim was conferred by a federal statute[13] which gave exclusive copyright jurisdiction to the federal courts, but no jurisdiction would have existed over the unfair competition claim if it had been brought alone since there was neither a federally created right involved nor diversity of citizenship between the parties. The Supreme Court held that the doctrine of pendent jurisdiction should have been applied to the nonfederal claim and that it was error for the lower court to dismiss that claim merely because the copyright claim was eventually decided against the plaintiff.

Arguably, the "one cause of action" test of *Hurn*, which would encompass the case of a single plaintiff asserting two claims, would not extend to cases like *Wilson* and *Newman* where two plaintiffs are suing, each on a single claim.[14] The *Hurn* approach, however, dependent upon some chimerical distinction between separate "cause of action" and separate "grounds for relief,"[15] caused consid-

12. *Id.* at 246.

13. 28 U.S.C. § 1338 (1964) provides in pertinent part as follows: "(a) The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, copyrights and trade-marks. Such jurisdiction shall be exclusive of the courts of the states in patent and copyright cases."

14. The term "cause of action" often takes on different meanings in different contexts, but in general it is the right to recover a judgment on a claim which accrues to *one person* when one of his legal rights has been invaded. If defined in these terms, a single cause of action would be limited to a single plaintiff alleging a single wrong against a single defendant. Thus two plaintiffs, unless they were asserting a "joint right" would necessarily have separate causes of action. For a discussion of the various theories as to what constitutes a single cause of action, *see* Clark, *The Code Cause of Action*, 33 YALE L.J. 817 (1924); Gavit, *The Code Cause of Action: Joinder and Counterclaims*, 30 COLUM. L. REV. 802 (1930); McCaskill, *Actions and Causes of Action*, 34 YALE L.J. 614 (1925).

While the single-plaintiff definition of "cause of action" would explain the failure of pendent jurisdiction to be applied in the two-plaintiff situation under the single cause of action test of *Hurn*, a few cases have so extended the doctrine. *See* Borror v. Sharon Steel Co., 327 F.2d 165 (3d Cir. 1964); Raybould v. Mancini-Fattore, 186 F. Supp. 235 (E.D. Mich. 1960); text accompanying notes 20-24 *infra*.

15. The Supreme Court in *Hurn* drew a distinction between two common situations. The first involves the assertion of two separate *grounds* in support of a single cause of action, only one of which is normally cognizable in a federal court; the second concerns the allegation of two distinct *causes of action*, again only one of which meets the federal jurisdictional requirements. An example of the former situation is provided by the *Hurn* case in which the defendant allegedly copied the plaintiff's play without his permission. This single action by the defendant, if proved, would have violated both the federal copyright law as well as the state unfair competition law—two separate *grounds* for relief. An example of the latter situation would be a defendant who has allegedly copied from two plays written by a plaintiff, only one of which is copyrighted. The claim arising from the non-copyrighted play could not be appended under the *Hurn* test because it is a separate *cause* of action.

erable confusion among the courts.[16] Recognizing this conceptual difficulty, the Supreme Court in the recent case of *United Mineworkers v. Gibbs*[17] reviewed the problem and found the rather limited approach of *Hurn* unnecesarily grudging. As a more suitable standard, it proposed the following:

> The state and federal claims must derive from a common nucleus of operative fact. But if, considered without regard to their federal or state characters, a plaintiff's claims are such that he would ordinarily be expected to try them all in one judicial proceeding, then, assuming substantiality of the federal issues there is *power* in federal courts to hear the whole.[18]

Thus, *Gibbs* seems to have done away with the single cause of action requirement and directs a broader inquiry into the relationship of the two claims asserted. Although *Gibbs* was factually similar to *Hurn* in that it involved the traditional situation of one plaintiff asserting alternative federal and state claims, its underlying philosophy appears to encompass the two-plaintiff, diversity jurisdiction complex which confronted the courts in the *Wilson* and *Newman* cases.[19]

In addition to its reliance on *Gibbs*, the court in *Wilson* cited several recent lower court decisions, rendered even before *Gibbs*, which upheld the exercise of pendent jurisdiction in similar multiple-plaintiff situations. In *Raybould v. Mancini-Fattore*,[20] the plaintiff sued both in his individual capacity and as administrator of his wife's estate. Both claims grew out of his wife's death, which had been caused by an explosion at the defendant's place of business where plaintiff's wife had been employed. Although the amount of the claim of the plaintiff-administrator was less than the jurisdictional minimum, the court allowed it to be litigated with that of the plaintiff-husband "in order to avoid a multiplicity of actions."[21] *Raybould* apparently was the first case to allow a state claim to append to a federal diversity claim rather than to a federal question claim. Of course, traditionally, a single plaintiff has been allowed to aggregate as many claims as he may have against a defendant in

16. *See* Shulman & Jaegerman, *Some Jurisdictional Limitations on Federal Procedure*, 45 YALE L.J. 393, 397-410 (1936); Wechsler, *Federal Jurisdiction and the Revision of the Judicial Code*, 13 LAW & CONTEMP. PROB. 216, 232 (1948).

17. 383 U.S. 715 (1966); noted in 80 HARV. L. REV. 220 (1966) and 13 LOYOLA L. REV. 167 (1966) and 44 TEXAS L. REV. 1631 (1966).

18. 383 U.S. at 725.

19. Of course, the literal language of *Gibbs* refers to *a plaintiff's claims*, and one could thus read *Gibbs* as not extending to the case involving multiple-plaintiffs.

20. 186 F. Supp. 235 (E.D. Mich. 1960). *See also* Borror v. Sharon Steel Co., 327 F.2d 165 (3d Cir. 1964); Johns-Manville Sales Corp. v. Chicago Title & Trust Co., 261 F. Supp. 905 (N.D. Ill. 1966).

21. 186 F. Supp. at 236.

determining whether the jurisdictional amount is met.[22] Thus, while the bringing of a $10,000 claim and a $3,000 claim by a single plaintiff could be viewed as an exercise of ancillary jurisdiction, it has always been thought of in terms of an aggregation of separate claims.[23] Indeed, one commentator has suggested that *Raybould* can be explained as a single plaintiff aggregation case since there is really only a single plaintiff who is suing in different capacities.[24]

Furthermore, even on a theory of pendent jurisdiction, *Raybould* can be defended, for there appears to be no sound reason for restricting the application of pendent jurisdiction to cases involving federal question claims.[25] However, the application of pendent jurisdiction in a case like *Newman* does pose a serious threat of additional intrusion into state court jurisdiction, since the mere appointment of an out-of-state guardian acted to deprive the state court of two claims. The real objecion in *Newman*, however, lies with the ease of creating federal jurisdiction by such appointment and the problem should be attacked at that point rather than by limiting pendent jurisdiction.[26] And, at least, the convenience of the parties and the courts is promoted in *Newman* by allocating the judicial business to a single court even if one is still uneasy that the federal rather than the state court is hearing the lawsuit.

Another case decided prior to *Gibbs*, *Morris v. Gimbel Bros.*,[27] foreshadowed the decisions in *Wilson* and *Newman*. In *Morris*, a husband's claim for loss of consortium and services was heard with

22. *See, e.g.*, Richie v. Richie, 186 F. Supp. 592 (E.D.N.Y. 1960); cases cited 1 W. BARRON & A. HOLTZOFF, FEDERAL PRACTICE & PROCEDURE § 24 n.56.4 (Wright ed. 1960).

23. *See* Note, *The Federal Jurisdictional Amount Requirement and Joinder of Parties Under the Federal Rules of Civil Procedure*, 27 IND. L.J. 199 (1952).

24. *See* C. WRIGHT, FEDERAL COURTS § 36 n.12 (1963).

25. In the past a notion somewhat akin to pendent jurisdiction has allowed claims related to a legitimate federal claim to be litigated together with the federal claim under the removal jurisdiction of the federal courts. Prior to the enactment of 28 U.S.C. § 1441(c) (1964), an interpretation of the Separable Controversy Act of 1875, 18 Stat. 470, allowed separable, but not separate, claims to be removed along with the main claim, to a federal court. *See* Barney v. Latham, 103 U.S. 205 (1880). A theory of ancillary jurisdiction might be used to explain the result but removal of the separable cause of action was merely assumed to be an exception to the requirement of maximum diversity.

In Orn v. Universal Auto. Ass'n, 198 F. Supp. 377 (E.D. Wis. 1961), the court relied on the "separate and independent claim" provision of 28 U.S.C. § 1441(c) (1964) to retain jurisdiction of a claim for less than the minimum jurisdictional amount in a removal case. This case also lends support to the exercise of ancillary jurisdiction in cases like *Wilson* and *Newman*.

26. For a discussion of this type of "created" federal jurisdiction and a recommendation that it be judicially curtailed, *see* Coham & Tate, *Manufacturing Federal Diversity Jurisdiction by Appointment of Representatives: Its Legality and Propriety*, 1 VILL. L. REV. 201 (1956); Note, *Appointment of Non-Resident Administrators To Create Federal Diversity Jurisdiction*, 73 YALE L.J. 873 (1964). *See also* AMERICAN LAW INSTITUTE, STUDY OF JURISDICTION, (OFFICIAL DRAFT) pt. 1, at § 1307 (1965).

27. 246 F. Supp. 984 (E.D. Pa. 1965).

the wife's claim for personal injuries despite the fact that there was not even "the remotest possibility" of a verdict for the husband "of $10,000 or anything like it."[28] The federal District Court for the Eastern District of Pennsylvania cited only one authority[29] for its application of pendent jurisdiction to those facts, but it did note that "Pennsylvania has long recognized the complementary nature of the actions of husband and wife where the wife was injured."[30] The court reasoned that since the recoveries on both claims would depend on the severity and duration of the wife's injuries, it would be both advantageous and proper to try the two claims together.[31]

Rules 2228(b) and 2232 of the Pennsylvania Rules of Civil Procedure[32] further support the decisions in the principal cases (both of which involved federal courts sitting in Pennsylvania). These rules provide that when claims resulting from an injury to a minor accrue both to the minor and to his parent or guardian, the two claims must be presented in a single action if at all. While these rules were not interpreted as providing a potential bar to the father's later access to the state court or as binding in any way upon the federal forum,[33] the federal court in *Wilson* chose to "give recognition" to the state procedure.[34] It is, of course, appropriate for a federal court to effectuate state policy as long as it does not violate

28. *Id.* at 986.

29. Borror v. Sharon Steel Co., 327 F.2d 165 (3d Cir. 1964). The court did not cite *Raybould* although the facts of that case were identical to those in *Borror.*

30. 246 F. Supp at 986.

31. *Id.* The decisions in *Raybould, Borror* and *Morris* appear to have disregarded earlier holdings to the contrary. *See, e.g.,* Sobel v. National Fruit Product Co., 213 F. Supp. 564 (E.D. Pa. 1962); Diana v. Canada Dry Corp., 189 F. Supp. 280 (W.D. Pa. 1960); Bell v. Mykytiuk, 135 F. Supp. 167 (E.D. Pa. 1955); Anicola v. J. C. Penny Co., 98 F. Supp. 911 (E.D. Pa. 1951). However, they do appear to be more consistent with the gradual expansion of pendent jurisdiction. The ancestry of the doctrine can be traced back as far as the opinion of Chief Justice Marshall in Osborn v. Bank of the United States, 22 U.S. (9 Wheat.) 738 (1824), but its first important articulation did not come until 1909 in Siler v. Louisville & N.R.R., 213 U.S. 175. Twenty-four years later the doctrine was significantly expanded in Hurn v. Oursler, 289 U.S. 238 (1933). *See* notes 11-16 *supra* and accompanying text. Recent evidence of continued expansion appears to be present in United Mine Workers v. Gibbs, 383 U.S. 715 (1966), where the Court enunciated the broadest definition of pendent jurisdiction to date. *See* text accompanying notes 17-19 *supra.*

32. Rule 2228(b) provides in pertinent part:

> If an injury, not resulting in death, is inflicted upon the person of a minor, and causes of action therefor accrue to the minor and also to the parent or parents of the minor, they shall be enforced in one action brought by the parent or parents and the child.

Rule 2232(a) provides as follows:

> The cause of action of a person required to join in an action as a party plaintiff by Rule 2228 shall be barred by failing to join therein if the defendant has given such person such notice of the pendency of the action as the court by general rule or special order may direct.

33. The rules are clearly "procedural" and therefore not binding on a federal court under the test laid down in Erie R.R. v. Tompkins, 304 U.S. 64 (1938), and subsequently developed in Guaranty Trust Co. v. York, 326 U.S. 99 (1945) and Byrd v. Blue Ridge Rural Elec. Coop., 356 U.S. 525 (1958).

34. 364 F.2d at 564.

any of its own rules or the federal laws.[35] In *Newman*, however, it is arguable that the policy of joining the claims of the minor and parent is at odds with the federal policies of refusing to hear "manufactured" diversity claims and of requiring maximum diversity between parties. Presumably, the father in the *Newman* case could have been appointed as his son's guardian, joined his own claim for expenses, and litigated the entire action in the state court. Perhaps, then, pendent jurisdiction should not be exercised in cases like *Newman* where all of the real parties involved are Pennsylvania citizens.[36]

The *Wilson* and *Newman* courts pointed to the desirable policies that are advanced by permitting the two claims to be litigated together. Because the proof necessary to establish each of the claims is to a large extent the same, except on the issue of damages, all litigation arising from the accident can be disposed of with a minimum expenditure of judicial time. Moreover, the corresponding reduction of litigational anxiety and expense significantly benefits the parties. It is true, of course, that considerations of convenience can never alone be determinative of a jurisdictional question.[37] However, where the statute being construed does not speak directly to the problem and where the intrusion into state court jurisdiction is minimal,[38] considerations of economy and convenience take on added weight.

A further justification for the extension of pendent jurisdiction in these cases is the present paradox which results when the liberal joinder provisions of the Federal Rules of Civil Procedure are contrasted with the practice of giving restrictive interpretation to jurisdictional statutes.[39] The letter and spirit of the Rules provide a framework for resolving in a single action all claims arising from one transaction or occurrence,[40] but the jurisdictional statutes often

35. De Sylva v. Ballentine, 351 U.S. 570 (1956); Cope v. Anderson, 331 U.S. 461 (1947).

36. The argument can be made that pendent jurisdiction in the multiple-plaintiff situation should be limited to the deficient jurisdictional amount claim and should not be applied where non-diverse parties will append. On the other hand, the preservation of maximum diversity at the cost of litigating essentially the same action in separate courts does not appear desirable.

37. The authors of a leading article on federal jurisdiction made this point as follows: "The extent to which a federal court may permit various claims to be presented in an action is determined . . . not merely by considerations of convenience but also by notions as to the proper functions of the federal courts and their relation to the courts of the states." Shulman & Jaegerman, *supra* note 16, at 393.

38. *See* discussion in text at pp. 380-81 *infra*.

39. This continuing paradox was cited by the court in *Raybould* as a reason for its decision: "Surely it would be contrary to the clear intent and purpose of the [Federal Rules of Civil Procedure] to require that this litigation be split between two courts." Raybould v. Mancini-Fattore, 186 F. Supp. 235, 236 (E.D. Mich. 1960). *See generally* Clark & Moore, *A New Federal Civil Procedure: II. Pleadings and Parties*, 44 YALE L.J. 1291 (1935); Note, 64 HARV. L. REV. 968 (1951).

40. *See, e.g.*, FED. R. CIV. P. 13 (1967) (counterclaim and cross-claim), 14 (third-party practice). *See also* Clark & Moore, *supra* note 39.

prevent the federal courts from hearing such claims. It is arguable that an expansion of the pendent jurisdiction doctrine was intended as the vehicle for resolving this apparent conflict.[41]

There are, of course, considerations which indicate that the Pennsylvania district courts should not have extended the pendent jurisdiction doctrine to the multiple-plaintiff situation. Determinations of jurisdiction should be easily made at the outset of the litigation. Any exceptions to or extensions of the present scope of the doctrine might endanger that policy. In the principal cases, however, the holdings were carefully limited to situations in which a second plaintiff appended a claim which was derived from a jurisdictionally valid claim of a member of his own household. Whether a future case falls into that category should prove immediately determinable by the trial court at the pleading stage.

Possibly the most compelling factor opposing an extension of pendent jurisdiction is that diversity jurisdiction was not created by Congress to provide a forum for everyone; thus, any judicial expansion of that jurisdiction at the expense of state courts must be examined to insure that some relevant federal policy is being effectuated. In *Wilson*, the thrust of the court's argument was that the father and the son were, in a real sense, the "same" plaintiff, and that the son was prevented from suing for the full amount of the damages caused by the defendant's negligence only because he was not financially able to pay his own medical bills.[42] Since Congress had made a determination that the son's claim may be litigated in federal court, it is difficult to understand an objection to hearing the father's claim for medical bills at the same time. The same rationale can be used in *Newman*. Given judicial submission to the appointment of an out-of-state guardian as a means for acquiring diversity jurisdiction,[43] the father's claim should likewise be heard. The objection that there is a greater intrusion into state judicial business because there are now two claims in the federal court on the basis of an artificial diversity must be weighed against the ab-

41. *See* Shulman & Jaegerman, *supra* note 16.

42. 364 F.2d 558, 564 (3d Cir. 1966) ("The father's claim is not independent from the claim which he made on behalf of his minor son, for the father's damages flowed to him from the injury which the son suffered and are ancillary to the son's claim.").

43. By enacting 28 U.S.C. § 1359 (1964), Congress appeared to have provided a remedy for the collusive suit. It provides that a district court shall not have jurisdiction of a civil action "in which any party, by assignment or otherwise, has been improperly or collusively made or joined to invoke the jurisdiction of such court." Judicial interpretation, however, has rendered the section largely ineffective. *See, e.g.*, Jamison v. Kammerer, 264 F.2d 789 (3d Cir. 1959); Corabi v. Auto Racing, Inc., 264 F.2d 784 (3d Cir. 1959). *See generally* AMERICAN LAW INSTITUTE, *supra* note 25; Coham & Tate, *supra* note 25; Note, *Appointment of Non-Resident Administrators To Create Federal Diversity Jurisdiction*, 73 YALE L.J. 873 (1964).

surdity of fracturing the claims and allowing the state court to hear one while the federal court adjudicates the other.

In evaluating the *Wilson* and *Newman* decisions, one must not lose sight of the narrowness of the courts' holdings. These decisions do not allow separate plaintiffs to aggregate their claims to achieve the jurisdictional minimum. One plaintiff must always have legitimate access to the federal court on his own. Nor do the decisions allow a second member of the same household to append a jurisdictionally deficient claim for his own nonderivative injury to the claim of the main plaintiff. In that type of situation there is less overlapping evidence, and dismissing the second claim is less like forcing the "same" plaintiff to sue in two different courts. And, when pendent jurisdiction in the multiple-plaintiff situation is limited to a *derivative* claim by the second plaintiff, there will be little incentive to invent an artificial federal claim in order to litigate a state claim in a federal court, since there will be no chance of recovering on the pendent claim if the claim independently before the court is defeated.

Finally, the potential added intrusion into the domain of state courts is small. In very few cases will a federal court engage in an additional construction or application of state law that would not have been involved in the main claim. Except for a few cases where the parent or spouse will be defending a charge such as contributory negligence, the only additional determination to be made by the court will be assessment of the second plaintiff's damages.